

16D C.J.S. Constitutional Law § 2125

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

E. Personal and Political Rights

1. General Considerations

§ 2125. Due process considerations with respect to right to travel

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law  4036

The right to travel is a part of the liberty of which a person cannot be deprived without due process of law.

The right to travel is a fundamental right¹ and a part of the liberty of which a person cannot be deprived without due process of law² and is closely related to the rights of free speech and association.³ It enjoys a unique and protected place in our national heritage⁴ and is an important aspect of a citizen's liberty under the Fifth Amendment⁵ and the Fourteenth Amendment.⁶ Accordingly, restrictions on the right to travel cannot be dismissed by asserting that the right to travel can be fully exercised if the individual first gives up membership in a given association.⁷

Use of passport.

Although the right to international travel is a liberty interest protected under the Fifth Amendment, it does not carry the same degree of protection as travel within the United States.⁸ Even though cancellation of a purported citizen's United States passport implicates a specific liberty interest, namely, the right to travel internationally,⁹

the government may, without violating due process, refuse to validate a citizen's passport for travel to a foreign country.¹⁰ This is so because United States passports are not the property of the individuals to whom they are issued and do not implicate any property interests under the Due Process Clause.¹¹ The fact that such refusal renders the flow of information concerning the foreign country less than wholly free, however, is a factor to be considered in determining whether the citizen has been denied due process of law.¹²

A statute providing for denial of a passport to a parent who is substantially in arrears in child support does not deny procedural due process because of the important governmental interest in enforcing child support orders.¹³

Currency transactions.

Although a restriction on the right to travel is the means used to curtail the flow of hard currency to a particular foreign country, the right of the executive to curtail such flow does not violate the freedom to travel protected by the Due Process Clause of the Fifth Amendment.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

The substantive due process right to travel does not prevent toll roads, speed limits, or travel-related taxes. U.S. Const. Amend. 14. *Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Moseley v. Price*, 300 F. Supp. 2d 389 (E.D. Va. 2004).
- 2 U.S.—*U.S. v. Laub*, 385 U.S. 475, 87 S. Ct. 574, 17 L. Ed. 2d 526 (1967); *NYC C.L.A.S.H., Inc. v. City of New York*, 315 F. Supp. 2d 461 (S.D. N.Y. 2004).
- 3 U.S.—*Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659, 12 L. Ed. 2d 992 (1964); *NYC C.L.A.S.H., Inc. v. City of New York*, 315 F. Supp. 2d 461 (S.D. N.Y. 2004).
As to freedom of speech, press, assembly, and petition being within the due process guaranty, see § 2144.
- 4 U.S.—*Johnson v. City of Cincinnati*, 310 F.3d 484, 2002 FED App. 0332P (6th Cir. 2002).
- 5 Me.—*Light v. D'Amato*, 2014 ME 134, 105 A.3d 447 (Me. 2014).
N.Y.—*Williams v. Department of Corrections and Community Supervision*, 43 Misc. 3d 356, 979 N.Y.S.2d 489 (Sup 2014).
- 6 Okla.—*Edmondson v. Pearce*, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
U.S.—*Perez-Morciglio v. Las Vegas Metropolitan Police Dept.*, 820 F. Supp. 2d 1111 (D. Nev. 2011).
N.Y.—*Williams v. Department of Corrections and Community Supervision*, 43 Misc. 3d 356, 979 N.Y.S.2d 489 (Sup 2014).
- 7 U.S.—*Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659, 12 L. Ed. 2d 992 (1964).
- 8 U.S.—*Emergency Coalition to Defend Educational Travel v. U.S. Dept. of the Treasury*, 545 F.3d 4, 238 Ed. Law Rep. 45 (D.C. Cir. 2008).

- 9 U.S.—Atem v. Ashcroft, 312 F. Supp. 2d 792 (E.D. Va. 2004).
10 U.S.—Zemel v. Rusk, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965).
11 U.S.—Atem v. Ashcroft, 312 F. Supp. 2d 792 (E.D. Va. 2004).
12 U.S.—Zemel v. Rusk, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965).
13 U.S.—Risenhoover v. Washington County Community Services, 545 F. Supp. 2d 885 (D. Minn. 2008).
14 U.S.—Regan v. Wald, 468 U.S. 222, 104 S. Ct. 3026, 82 L. Ed. 2d 171 (1984).

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